



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: S.D.M. Supply, Inc.

File: B-271492

Date: June 26, 1996

Donald E. Goodroe for the protester.

Major Michael J. O'Farrell, Jr., Department of the Army, for the agency.

Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency failed to promote competition to the maximum extent practicable under a request for quotations issued on the Federal Acquisition Computer Network (FACNET) using simplified acquisition procedures where the agency failed to maintain adequate procedures for receiving quotations through FACNET, as evidenced by its loss of all of the quotations submitted through FACNET because of a previously identified systemic problem with its computer.

DECISION

S.D.M. Supply, Inc. protests the issuance of purchase order No. DABT01-96-V-0248 to New Pig Corporation under request for quotations (RFQ) No. DABT01-96-T-0112 issued by the U.S. Army Aviation Center, Fort Rucker, Alabama, as a small business, small purchase set-aside, for seven aerosol can puncturing systems.¹ S.D.M. contends that the agency failed to consider S.D.M.'s lower-priced quotation which was timely submitted through the Federal Acquisition Computer Network (FACNET).

We sustain the protest.

FACNET refers to a government-wide electronic commerce/electronic data interchange systems architecture that provides for electronic data interchange of acquisition information between the government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access. Federal Acquisition Streamlining Act of 1994, 41 U.S.C § 426(a), (b)(3) (1994); Federal Acquisition Regulation (FAR) § 4.501 (90-29). FACNET creates an electronic marketplace for the acquisition of supplies and services. That is, through

¹These devices are used to render discarded aerosol cans safe for incineration.

FACNET, contracting agencies can post notices of and receive responses to solicitations, post notices of contract awards, and issue orders where practicable; and private sector users can access notice of solicitations, receive orders, and access information on contract awards. 41 U.S.C. § 426(b)(1), (2).

A contracting agency enters solicitation data into FACNET through a business application program on its computer. The data is then electronically transmitted to a government gateway, which is a computer/communications system performing a variety of data management functions, such as converting business application program data into the proper data format for subsequent transmission. After processing by the gateway, the information is transmitted to a network entry point, which is also government operated, and relayed to Value-Added Networks (VAN).² VANs, which are private sector entities, then provide information obtained from the FACNET to their customers, who have registered to do business with the government and are known as trading partners. Trading partners submit quotations through FACNET to the contracting agency in reverse order to that described above. All transactions conducted over FACNET, except the issuance of RFQs, are acknowledged automatically by the end of the business day following the arrival of the transmission at its destination to notify the sender as to whether a transaction has been received, e.g., to notify a trading partner that its quotation has been received by the contracting agency.

Here, the RFQ was issued through FACNET on February 7, 1996. The RFQ was also mailed to New Pig and one other vendor. The RFQ instructed vendors that quotations were due by close of business February 20, and that quotations could also be submitted to the contracting office via facsimile transmission. Only one quotation—from New Pig—was received at the contracting office by the time and date set for receipt of quotations, and this quotation was submitted via facsimile transmission. Because no quotations had been received through FACNET, the purchasing agent asked the office's computer systems administrator to verify that no quotations had been received on the office's computer. Following the computer administrator's confirmation, the purchasing agent determined that New Pig's quotation of \$4,473 was fair and reasonable, and issued the purchase order to New Pig on February 21.

The contracting office then posted a notice on FACNET that the purchase order had been issued to New Pig. As a result of this notice, the purchasing agent subsequently received telephone calls from three other vendors, including the protester, complaining that they had submitted quotations through FACNET for this

²A VAN, typically a commercial information service, provides access to FACNET as well as communications services, electronic mailboxes and other services for electronic data interchange transmissions. See FAR § 4.501.

RFQ and that their quoted prices were lower than New Pig's. When the agency declined to cancel the purchase order, S.D.M. filed an agency-level protest, contending that it should have been issued the purchase order based on its lower quotation of \$3,080. This protest was accompanied by printed records from S.D.M.'s computer showing transactions with its VAN, including the quotation it claimed to have submitted on February 8 to Ft. Rucker, as well as an acknowledgment of the receipt of its quotation dated February 9.

The contracting officer denied S.D.M.'s protest because the protester assertedly had not shown that the agency's failure to receive S.D.M.'s quotation was caused by government computer error or malfunction or by government mishandling. In this regard, the contracting officer asserted that the acknowledgment received by S.D.M. was generated by S.D.M.'s VAN and not by the government, and was not evidence of receipt of S.D.M.'s quote by the government.

S.D.M. then filed its protest with our Office, contending that the acknowledgment it received was in fact generated by the government, and because the government actually received S.D.M.'s quotation, the agency's failure to consider the quotation was the result of mishandling.³

In response, the Army admits that on the date that quotations were due, the FACNET system malfunctioned. During a telephonic hearing conducted by our Office, agency personnel stated that, after S.D.M.'s protest had been filed, they had discovered computer records showing that three vendors, including S.D.M., had in fact submitted quotations through FACNET for this RFQ, which were received by the Standard Army Automated Contracting System (SAACONS) government computer gateway located at Fort Lee, Virginia, and relayed to Ft. Rucker. Correcting the agency's earlier assertion, the agency personnel stated that the acknowledgment received by S.D.M. was in fact generated by the government upon receipt of its quotation rather than by the protester's VAN. During this telephonic hearing, the SAACONS software technician explained that S.D.M.'s quotation was "lost" because of a transmission "bottleneck" located at the Ft. Rucker computer system, which had to be cleared before the quotations could continue to the contracting office destination, and that this problem was not discovered until after the contracting office had issued the purchase order.

Since the acknowledgment received by S.D.M. was generated by the SAACONS government gateway, which then transmitted S.D.M.'s quotation to Ft. Rucker, the

³S.D.M. also complains that the aerosol can disposal system was available on a General Services Administration Federal Supply Schedule contract at a lower price than New Pig's. The agency contracting personnel state that they were unaware until after award that the disposal system was listed on the schedule.

protester received the acknowledgment, even though the "bottleneck" at the Ft. Rucker computer prevented S.D.M.'s and the other vendors' quotations from actually being received by the contracting office. The contracting personnel, who were inexperienced with the computer system, failed to check available computer system status reports, which would have indicated the existence of the problem, and were thus unaware of the problem preventing the receipt of FACNET quotations prior to the issuance of the purchase order. Finally, during the telephonic hearing the contracting personnel reported several other instances of quotations transmitted over FACNET being "lost" in the computer system at Ft. Rucker, including other situations where, as here, the contracting office failed to receive any of the quotations submitted through FACNET in response to an RFQ.

Agencies, when using simplified acquisition procedures, must promote competition "to the maximum extent practicable." Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(g)(3) (1994). In meeting this requirement, agencies must make reasonable efforts, consistent with efficiency and economy, to afford all eligible and interested vendors an opportunity to compete. RMS Indus., B-247074, Mar. 18, 1992, 92-1 CPD ¶ 290. Agencies have a fundamental obligation to have procedures in place not only to receive quotations, but also to reasonably safeguard quotations actually received and to give them fair consideration. East West Research Inc., B-239565; B-239566, Aug. 21, 1990, 90-2 CPD ¶ 147, aff'd, Defense Logistics Agency--Recon., B-239565.2; B-239566.2, Mar. 19, 1991, 91-1 CPD ¶ 298. On the other hand, we recognize, as a practical matter, that even with appropriate procedures in place, an agency occasionally will lose or misplace a bid or quotation, especially when the procuring activity is responsible for a high volume of small purchase buys, and have taken the position that the occasional negligent loss of a quotation by an agency does not entitle the supplier to any relief. Id.; Interstate Diesel Serv., Inc., B-229622, Mar. 9, 1988, 88-1 CPD ¶ 244.

This case involves more than mere occasional negligent loss of a quotation. Instead, the agency's loss of the protester's quotation was due to a systemic failure that resulted in the loss of all other quotations submitted for this RFQ through FACNET. The agency reports that similar systemic failures have occurred for other RFQs issued by Ft. Rucker. As indicated, an agency, in order to satisfy its obligation under CICA to promote competition to the maximum extent practicable, must have adequate procedures to receive and safeguard quotes actually received, as well as to give them fair consideration. East West Research Inc., supra. The record here evidences that the agency did not have adequate procedures in place to

ensure that quotations received through FACNET would be considered, and we sustain the protest on this basis.⁴

The agency states that in light of the problems it has experienced with FACNET, it allows quotations to be submitted via facsimile transmission in order to give vendors as much opportunity as possible to participate, and asserts that the protester should have availed himself of this opportunity. However, we think the protester here was under no obligation to additionally transmit its quotation via facsimile to the agency because the RFQ did not caution potential quoters of the problems it was having receiving quotes over FACNET and the protester reasonably relied on the acknowledgment that its quotation had been received by the government through FACNET. Indeed, the FAR contemplates that responses to solicitations and requests for information issued through FACNET will be submitted through FACNET in furtherance of the goal of converting the acquisition process from paper-based to an electronic one. FAR § 4.505-1(b); see H.R. Conf. Rep. No. 712, 103d Cong., 2d Sess. 238 (1994), reprinted in 1994 U.S.C.C.A.N. 2607, 2668; see generally Arcy Mfg. Co., Inc., et al., B-261538, et al., Aug. 14, 1995, 95-2 CPD ¶ 283 (note 10).

No corrective action is feasible because the agency has taken delivery of the aerosol can puncturing systems. We recommend that the protester recover its quotation preparation costs, as well as the costs of filing and pursuing its protest. 4 C.F.R. § 21.8(d) (1996). S.D.M.'s certified claim for such costs, detailing the time expended and costs incurred, should be submitted directly to the agency within 90 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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⁴The SAACONS software technician reports that a procedure is being implemented for the future, which will allow the Ft. Rucker contracting personnel to automatically print status reports to alert them to such computer system problems.